

From: Traylor, Patrick
Sent: Wednesday, May 30, 2018 09:01 PM
To: Brooks, Phillip
CC: Kelley, Rosemarie; Bodine, Susan
Subject: FW: APPROVAL: Question about Feb 2018 settlement with Devon Energy
Attachments: CD-4 Slawson December 2016.pdf; CD3-Noble April 2015.pdf; CD2-PDC
October 2017.pdf; CD-1 Devon February 2018.pdf

Phill:

Ex. 5 Deliberative Process (DP)

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From: Wilcox, Jahan
Sent: Wednesday, May 30, 2018 4:33 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Subject: APPROVAL: Question about Feb 2018 settlement with Devon Energy

Ex. 5 Deliberative Process (DP)

From: Lipton, Eric [mailto:lipton@nytimes.com]
Sent: Wednesday, May 30, 2018 3:22 PM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Question about Feb 2018 settlement with Devon Energy

Hello Jahan

I have some questions for you related to the Feb. 2018 settlement with Devon.

I would appreciate if you could get me a response by Friday afternoon.

Attached are settlements with Noble Energy (4/22/2015); Slawson Exploration Company (12/01/2016); PDC Energy, (10/31/2017), and Devon Energy (February 22, 2018). All four cases involved the failure to comply with rules designed to limit emissions of smog forming chemicals from storage tanks and other equipment serving natural gas production sites

Devon Energy appears to have received comparatively favorable treatment for similar violations relative to the penalty and cleanup requirements faced by the other companies.

The Devon agreement is an administrative settlement, which means that its obligations expire after one year. The Noble, Slawson, and PDC consent decrees are judicial consent decrees supervised by federal judges, with requirements that extend well beyond a year.

The administrative settlement that EPA and Devon agreed to earlier this year does not include penalties for any of the Clean Air Act violations that EPA identified at some of the company's gas producing facilities in Texas. In contrast, Noble Energy paid \$4.95 million and PDC Energy \$2.5 million in civil penalties for violations at their Colorado operations, while Slawson Exploration paid \$2.1 million for similar violations at its gas producing sites on tribal land in North Dakota.

EPA consent decrees frequently include supplemental environmental projects or expenditures to mitigate (or offset) the defendant's illegal pollution. Devon made no such commitments, while consent decrees with Noble, PDC and Slawson require the companies to spend \$8.5 million, \$1.7 million, and \$2.05 million, respectively, on environmental or mitigation projects that EPA expects will reduce significant amounts of smog forming pollutants.

The Devon consent decree largely relies on the company's existing protocols to correct the violations that EPA has identified. In contrast, the other consent decrees include much more detailed requirements meant to verify compliance and ensure that illegal emissions are found and eliminated. For example, Noble, PDC, and Slawson were obligated to:

- a) Pay for third party audits that include checking for leaks using infrared cameras, verifying that flares are actually lit and operating properly, and that vapor control systems meet appropriate engineering standards,
- b) Plug leaks of smog forming chemicals within five to ten days or shut off production operations associated with the leaking tank;
- c) Report any violations of the consent decree requirements to EPA;
- d) Pay stipulated penalties for the failure to meet obligations under the consent

decree.

EPA's administrative settlement with Devon did not include these and other specific requirements imposed on Devon's competitors.

EPA agreed to not to prosecute Noble, Slawson or PDC for the alleged violations in return for each company's commitment to comply with the cleanup requirements, pay the civil penalties and implement the additional environmental and mitigation projects specified in each consent decree. So there is one major difference here that is not advantageous for Devon: The EPA did not release its claims against Devon, but instead reserved its rights to take further enforcement action

This above analysis was provide to me by a former EPA enforcement chief. I wanted to ask if you can share it with you enforcement team so I can get input and have them explain to me why the Devon settlement was written the way it was. There is a chart below with a summary as well.

Obviously, we both know that Devon is an Oklahoma company and that I have written about Devon before, as it relates to Scott Pruitt. At this point, I am not asking any questions related to this history. I just want to get input on how the Devon settlement compares to others. Did Devon get a better deal. And if not, please explain why not and also, why it is then so different.

In this case, we have not started to write anything on this. I am holding off to get your input. I will only then decide once I get your input if this is worth a story.

Let me know when I can follow up. Happy to talk on background with someone in your enforcement office.

Please keep this request private.

Of course it is subject to FOIA. But I ask that you not attempt to take steps to counteract any story I may or may not be writing.

I do not yet even know if we will do a story here. That is why I am asking for your input

Thanks in advance. Happy to talk as well.

Eric

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